IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1567 OF 2005

M/s.Premier Limited, (formerly)
Premier Automobiles Ltd.)
a company incorporated under
the Companies Act, 1913 having
its Registered Office at Lal
Bahadur Shastri Marg, Kurla,
Mumbai - 400 070 .. Petitioner.

V/s.

1. Union of India (Through
the Joint Secretary,
Ministry of Law Justice
and Company Affairs,
Aayakar Bhawan, M.K. Road,
Churchgate, Mumbai - 400 020

2. The Special Director
(Appeals), FEMA, being in
the office of the Commissioner
of Income Tax Delhi-II,
Room No.328, C.R. Building,
I.P. Estate, New Delhi 2.

3. The Assistant Director,
Directorate of Enforcement)
having his office at 2nd
Floor, Mittal Chambers,
Nariman Point, Mumbai - 21. .. Respondents.

Mr.Vikram Nankani with Mr.Madhur Baya for the petitioner.

Mr.B.A. Desai, Additional Solicitor General with Mr.A.M. Sethna for the respondents.

WRIT PETITION NO.2780 OF 2004

1. Godrej Industries Limited
(formerly known as Godrej
Soaps Limited), a Company
incoreporated under the
Companies Act, 1956 and
having its registered address
at Pirojshanagar, Eastern
Express Highway, Vikhroli,

Mumbai 0 400 079

2. A.B. Godrej of Mumbai,
Indian inhabitant, having
his office at Godrej Ind.
Ltd. (formerlyknown as
Godrej Soaps Limited),
Pirojshanagar, Eastern
Express Highway, Vikhroli,
Mumbai - 400 079. .. Petitioners.

V/s.

1. Union of India, Aayakar
Bhavan, Mumbai - 400 006.

2. Special Director, Enforcement
Directorate, Janmabhoomi
Charges, 1st Floor, Walchand
Hirachand Marg, Mumbai 400 001.

3. Deputy Director, Enforcement
Directorate, 2nd Floor, Mittal
Chambers, Nariman Point,
Mumbai - 400 021.

4. Special Director (Appeals)
C/O Commissioner of Income
Tax Room No.328, C.R. Bldg.,
I.P. Estate, New Delhi 110 002

5. Collector of Mumbai, Mumbai
Suburban District (Recovery
Branch), Administrative Bldg.,
9th Floor, Near Chetana College,
Govt. Colony, Bandra (East),
Mumbai - 400 051. .. Respondents.

WRIT PETITION NO.2781 OF 2004

A.B. Godrej of Mumbai,
Indian inhabitant, having
his office at Godrej Ind.
Ltd. (formerlyknown as
Godrej Soaps Limited),
Pirojshanagar, Eastern
Express Highway, Vikhroli,
Mumbai - 400 079. .. Petitioner.

V/s.

1. Union of India, Aayakar

Bhavan, Mumbai - 400 006.

2. Special Director, Enforcement Directorate, Janmabhoomi Charges, 1st Floor, Walchand Hirachand Marg, Mumbai 400 001.

3. Deputy Director, Enforcement Directorate, 2nd Floor, Mittal Chambers, Nariman Point, Mumbai - 400 021.

4. Special Director (Appeals) C/O Commissioner of Income Tax Room No.328, C.R. Bldg., I.P. Estate, New Delhi 110 002

5. Collector of Mumbai, Mumbai Suburban District (Recovery Branch), Administrative Bldg., 9th Floor, Near Chetana College, Govt. Colony, Bandra (East), Mumbai - 400 051. .. Respondents.

WRIT PETITION NO.2782 OF 2004

N.B. Godrej of Mumbai, Indian inhabitant, having his office at Godrej Ind. Ltd. (formerly known as Godrej Soaps Limited), Pirojshanagar, Eastern Express Highway, Vikhroli, Mumbai - 400 079. .. Petitioners.

V/s.

1. Union of India, Aayakar Bhavan, Mumbai - 400 006.

2. Special Director, Enforcement Directorate, Janmabhoomi Charges, 1st Floor, Walchand Hirachand Marg, Mumbai 400 001.

3. Deputy Director, Enforcement Directorate, 2nd Floor, Mittal Chambers, Nariman Point, Mumbai - 400 021.

4. Special Director (Appeals) C/O Commissioner of Income

Tax Room No.328, C.R. Bldg.,
I.P. Estate, New Delhi 110 002

5. Collector of Mumbai, Mumbai
Suburban District (Recovery
Branch), Administrative Bldg.,
9th Floor, Near Chetana College,
Govt. Colony, Bandra (East),
Mumbai - 400 051. .. Respondents.

Mr.Milind Vasudeo i/b. R. Ravindran for the petitioner.

Mr.B.A. Desai, Additional Solicitor General with Mr.A.M. Sethna for the respondents.

CORAM : V.C. DAGA &
J.P. DEVADHAR, JJ.

DATED : 13TH JULY, 2006.

ORAL JUDGMENT (Per J.P. Devadhar, J.)

1. Common question of law involved in all these writ petitions is, whether, an appeal against the adjudication orders passed by the Assistant Director / Deputy Director of Encroachment under the repealed provisions of Foreign Exchange Regulation Act, 1973 ('FERA' for short) read with Section 49 of the Foreign Exchange Management Act, 1999 ('FEMA' for short) is maintainable before the Special Director (Appeals) appointed under FEMA. In all these cases, the Special Director (Appeals) has dismissed the appeals as not maintainable. As the issue involved in all these cases is common, all these petitions are heard together and disposed of by this common judgment.

2. FERA was enacted in the year 1973 inter alia for

the conservation of the foreign exchange resources of the country and proper utilisation thereof in the interests of the economic development of the country. FERA was repealed and replaced by FEMA with effect from 1st June, 2000. Section 49 of FEMA reads as follows :

> "49. Repeal and saving,- (1) The Foreign Exchange Regulation Act, 1973 (46 of 1973) is hereby repealed and the Appellate Board constituted under sub-section (1) of section 52 of the said Act (hereinafter referred to as the repealed Act) shall stand dissolved.
>
> (2) On the dissolution of the said Appellate Board, the person appointed as Chairman of the Appellate Board and every other person appointed as Member and holding office as such immediately before such date shall vacate their respective offices and no such Chairman and other person shall be entitled to claim any compensation for the premature termination of the term of his office or of any contract of service.
>
> (3) Notwithstanding anything contained in any other law for the time being in force, no court shall take notice of any contravention under section 51 of the repealed act after the expiry of a period of two years from the date of the commencement of this Act.
>
> (4) Subject to the provisions of sub-section (3) all offences committed under the repealed Act shall continue to be governed by the provisions of the repealed Act as if that Act had not been repealed.
>
> (5) Notwithstanding such repeal, -
>
> (a) anything done or any action taken or purported to have been done or taken including any rule, notification, inspection, order or notice made or issued or any appointment, confirmation or declaration made or any licence, permission, authorisation or exemption granted or any document or instrument executed or any direction given under the Act hereby repealed shall, in so far as it is not inconsistent with the provisions of

this Act, be deemed to have been done or taken under the corresponding provisions of this Act;

(b) any appeal preferred to the Appellate Board under sub-section (2) of section 52 of the repealed Act but not disposed of before the commencement of this Act shall stand transferred to and shall be disposed of by the Appellate Tribunal constituted under this Act;

(c) every appeal from any decision or order of the Appellate Board under sub-section (3) or sub-section (4) of section 52 of the repealed Act shall, if not filed before the commencement of this Act, be filed before the High Court within a period of sixty days, of such commencement;

Provided that the High Court may entertain such appeal after the expiry of the said period of sixty days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period..

(6) Save as otherwise provided in sub-section (3), the mention of particular matters in sub-sections (2), (4) and (5) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 (10 of 1897), with regard to the effect of repeal.

Thus, even after repeal of FERA w.e.f. 1st June, 2000 in view of Section 49 of FEMA, the adjudicating officer could take notice of any contravention of FERA upto 31st May, 2002. In all these cases, it is not in dispute that the cognizance of the offences under FERA have been taken prior to 31st May, 2002 and thereafter the adjudication orders have been passed under Section 51 of the FERA.

Thus, even after repeal of FERA, under Section 49 of FEMA all proceedings pending under FERA are saved and further the adjudication officer is empowered to take notice of any contravention under section 51 of

FERA for a period of two years from the date of commencement of FEMA, that is, upto 31st May, 2002. In other words, as per Section 49 of FEMA, action in respect of the offences committed under FERA could be taken even after the commencement of FEMA upto 31st May, 2002 and once the action is initiated within the aforesaid stipulated time, the proceedings would continue as if FERA has not been repealed. It is not in dispute that once the proceedings are initiated under FERA, the substantive right of appeal vested in a litigant on commencement of the proceedings are not affected by the repeal of FERA.

3. Under FERA, appeals against the orders passed by all the Adjudicating Authorities were maintainable before the Appellate Board constituted under FERA. While repealing FERA and enacting FEMA with effect from 1st June, 2000, the legislature provided in Section 49 of FEMA that the Appellate Board constituted under FERA shall stand dissolved and the persons appointed as Chairman and other members of the Appellate Board shall vacate their offices on commencement of FEMA. Thus, on repeal of FERA though the substantive right of appeal vested in a litigant in respect of the pending proceedings as well as the proceedings to be initiated upto 31st May, 2002 are preserved, the forum instituting of appeal before the Appellate Board constituted under

FERA is expressly taken away under FEMA. As a result, from 1st June, 2000 all appeals against the adjudication orders passed under FERA have to be instituted before the Appellate forum provided under FEMA.

4. The Adjudicating Authorities under FERA were Assistant Director / Deputy Director / Joint Director / Additional Director / Director of Enforcement and appeals against the adjudication orders passed by all these officers were maintainable before the Appellate Board constituted under FERA. Under the newly enacted FEMA, the Central Government has appointed the following officers to be the Adjudicating Authorities for the purpose of adjudication under Section 13 of FEMA namely Director / Special Director / Additional Director / Deputy Director of Enforcement.

5. As noted earlier, under FERA, all appeals against the orders passed by the Adjudicating Authorities were maintainable before the single appellate forum, namely the Appellate Board. However, FEMA provides for two Appellate forum against the orders of the Adjudicating Authorities namely the Special Director (Appeals) and the Appellate Tribunal. In the cases before us, appeals against the adjudication orders passed by the Assistant Director / Deputy Director of Enforcement after the dissolution of FERA Board were

filed before the Special Director (Appeals) under Section 17 of FEMA. However, all those appeals were dismissed as not maintainable. The question, therefore, to be considered in these petitions is, whether, appeals against the adjudication order passed by the Assistant Director / Deputy Director of Enforcement under FERA after the dissolution of the Appellate Board are maintainable before the Special Director (Appeals) under Section 17 of FEMA or whether such appeals are maintainable before the Appellate Tribunal constituted under Section 19 of FEMA.

6. Section 17 and 19 of FEMA to the extent relevant for the purpose herein read thus :

> "17. Appeal to Special Director (Appeals).- (1) The Central Government shall, by notification, appoint one or more Special Directors (Appeals) to hear appeals against the orders of the Adjudication Authorities under this section and shall also specify in the said notification the matter and places in relation to which the Special Director (Appeals) may exercise jurisdiction.
>
> (2) Any person aggrieved by an order made by the Adjudicating Authority, being an Assistant Director of Enforcement or a Deputy Director of Enforcement, may prefer an appeal to the Special Director (Appeals).
>
> (3)---------
> (4)---------
> (5)---------
> (6)---------
>
> "19. Appeal to Appellate Tribunal.- (1) Save as provided in sub-section (2), the Central Government or any person aggrieved by an order made by an Adjudicating Authority, other than

those referred to in sub-section (1) of section 17, or the Special Director (Appeals), may prefer an appeal to the Appellate Tribunal.

Provided that any person appealing against the order of the Adjudicating Authority or the Special Director (Appeals) levying any penalty, shall while filing the appeal, deposit the amount of such penalty with such authority as may be notified by the Central Government :

Provided further that where in any particular case, the Appellate Tribunal is of the opinion that the deposit of such penalty would cause undue hardship to such person, the Appellate Tribunal may dispense with such deposit subject to such conditions as it may deem fit to impose so as to safeguard the realisation of penalty.

(2) ----------
(3) ----------
(4) ----------
(5) ----------
(6) ----------"

7. Thus, Section 17 of FEMA provides that appeals against the adjudication orders passed by the Assistant Director / Deputy Director of Enforcement are maintainable before the Special Director (Appeals) and Section 19(1) of FEMA provides that appeals against the orders passed by the Adjudicating Authorities other than the Assistant Director / Deputy Director of Enforcement are maintainable before the Appellate Tribunal constituted under FEMA. Whether, these two appellate forum provided under FEMA are applicable to the appeals against the adjudication orders passed under FERA is the question to be decided in these writ petitions.

8. According to Mr.Nankani, learned counsel for the

petitioner in Writ Petition No.1567 of 2005, once the Appellate Board constituted under FERA is dissolved and appeals against the adjudication orders passed under FERA are required to be filed before the Appellate Authorities constituted under FEMA, then, as per Section 17 of FEMA, appeals against the adjudication order passed by Assistant Director / Deputy Director of Enforcement are maintainable before the Special Director (Appeals). Mr.Nankani further submits that in Section 19(1) of FEMA, the words 'Adjudicating Authorities other than those referred to in sub-section 1 of Section 17' simply means that appeals against the adjudication orders other than the orders passed by the Assistant Director / Deputy Director of Enforcement are maintainable before the Appellate Tribunal. In other words, appeals against the orders passed by the Adjudicating Authorities, such as Director / Special Director / Additional Director of Enforcement alone are maintainable before the Appellate Tribunal constituted under FEMA.

9. Relying upon the decisions of the Apex Court in the case of Maria Christiana De Souza Sodder & Others V/s. Amria Zurana Pereira Pinto & Others [(1979) 1 SCC 92], New India Assurance Co. Ltd. V/s. Shanti Mishra [(1975) 2 SCC 840] and Garikapatti Veeraya V/s. N. Subbaiah [AIR 1957 SC 540], Mr.Nankani submitted that

the appellate remedy conferred by the statute vests in the litigant absolutely, immediately on commencement of proceedings and in case the statute is repealed and the proceedings are continued under a different legislation which provides for a separate appellate forum, then the appeals against the orders passed under the repealed act are maintainable before the forum provided under the new enactment. In the present case, the newly enacted FEMA provides that the appeals against the adjudication orders passed by the Assistant Director / Deputy Director of Enforcement shall be maintainable before the Special Director (Appeals) and, therefore, the appeals against adjudication orders passed by the Assistant Director / Deputy Director of Enforcement under FERA would be maintainable before the Special Director (Appeals). Accordingly, Mr.Nankani submits that the impugned orders passed by the Special Director (Appeals) are contrary to law and hence liable to be quashed and set aside. Mr.Milind Vasudev, learned counsel appearing on behalf of the petitioners in the companion writ petitions has adopted the arguments advanced by Mr.Nankani.

10. Mr.Desai, learned Additional Solicitor General appearing on behalf of the revenue, on the other hand, submitted that the appeals against the orders passed by the Adjudicating Authorities under FERA are maintainable

only before the Appellate Tribunal constituted under FEMA and not before the Special Director (Appeals). According to Mr.Desai, the word 'Adjudicating Authority' in Section 17(1) of FEMA read in the light of Section 2(a) and Section 16 of FEMA clearly shows that the appeals before the Special Director (Appeals) are restricted to the appeals against the orders passed by the Adjudicating Authorities under FEMA and, therefore, appeals against the orders passed by the Adjudicating Authorities under FERA are not maintainable before the Special Director (Appeals). Secondly, the Special Director (Appeals) is defined under Section 2(zc) of FEMA to mean an officer appointed under FEMA to hear appeals against the orders of the Adjudicating Authorities under FEMA and, therefore, appeals against the orders passed by Adjudicating Authorities under FERA are not covered under Section 17 of FEMA. Thirdly, Section 19(1) of FEMA specifically provides that an appeal may be preferred to the Appellate Tribunal against an order made by the Adjudicating Authority other than those referred to in section 17(1) which clearly means that the appeals against the orders of the Adjudicating Authority under FERA would be maintainable before the Appellate Tribunal. Fourthly, Section 49(1), 49(4) and 49(5)(b) of FEMA provides that all offences committed under FERA shall continue to be governed by the provisions of FERA as if the said Act is not

repealed and all appeals preferred to the Appellate Board under FERA but not disposed of before the commencement of FEMA shall stand transferred to the Appellate Tribunal constituted under FEMA. As the appeals filed and pending before Appellate Board are transferred to the Appellate Tribunal, even the appeals entitled to be instituted before the Appellate Board, have to be instituted before the Appellate Tribunal. Lastly, it is contended that as per Section 49(6) of FEMA read with Section 6 of the General Clauses Act, 1897, unless a different intention appears in the new legislation, the proceedings under the repealed legislation would continue as if the repealing Act has not been passed. The submission is that since the Appellate Board is replaced by the Appellate Tribunal, unless there is any contrary intention, appeals maintainable before the Appellate Board would be maintainable only before the Appellate Tribunal.

11. Relying upon the decision of the Apex Court in the case of Gammon India V/s. Special Chief Secretary reported in 2006 (2) Scale 414 and the decision of the Delhi High Court in the case of S.K. Gupta V/s. Commissioner of Customs reported in 143 ELT 268 (Delhi), counsel for the revenue submitted that appeals against the orders passed by the Adjudicating Authorities under FERA which would ordinarily lie before the Appellate

Board under FERA but for its dissolution, would now lie only before the Appellate Tribunal as contemplated under Section 19(1) of the FEMA. Accordingly, it is submitted that the Special Director (Appeals) was justified in dismissing the appeals filed by the petitioners.

12. On careful consideration of the rival submissions, we are of the opinion that the contention of the petitioners that the appeals against the order passed by the Assistant Director / Deputy Director of Enforcement under FERA are maintainable before the Special Director (Appeals) constituted under FEMA deserves acceptance. In the present case, there is no dispute that the proceedings under FERA were initiated within the stipulated time and that the petitioners have a substantive right of filing an appeal against the adjudication orders passed under FERA. However, the dispute is whether such appeals are maintainable before the Special Director (Appeals) or before the Appellate Tribunal constituted under FEMA.

13. Admittedly, there was one appellate forum provided under FERA against the orders passed by the Adjudicating Authorities under FERA. However, under FEMA, the legislature has provided for two appellate forum against the orders of the Adjudicating Authorities under FEMA. In view of the dissolution of the Appellate

Board constituted under FERA, as per Section 49 of FEMA, appeals against the orders passed by the Adjudicating Authorities under FERA have to be instituted before the corresponding appellate forum constituted under FEMA.

14. Section 17(1) of FEMA empowers the Central Government to appoint one or more Special Director (Appeals) to hear appeals against the orders of the Adjudicating Authorities set out in that section. The words 'Adjudicating Authorities under this Section' in Section 17(1) clearly signifies that the powers of Special Director (Appeals) are restricted to the appeals against the orders passed by the Adjudicating Authorities specified in that section. Section 17(2) of FEMA specifically provides that appeals against orders of the Adjudicating Authority, such as Assistant Director / Deputy Director of Enforcement would be maintainable before the Special Director (Appeals) appointed under Section 17(1). Thus, the powers of the Special Director (Appeals) appointed under Section 17(1) is restricted to hear appeals against the orders of the Adjudicating Authority such as Assistant Director / Deputy Director of Enforcement.

15. It is the contention of the revenue that the word 'Adjudicating Authority' in Section 17(1) read with the definition of the word 'Adjudicating Authority'

given in Section 2(a) of FEMA would mean that the Special Director (Appeals) is empowered to hear appeals only against the orders passed by the Adjudicating Authorities under FEMA. The submission is that the powers of the Special Director (Appeals) appointed under Section 17(1) of FEMA is restricted to the appeals arising from the orders of the Adjudicating Authorities under FEMA and, therefore, appeals against the orders passed by the Adjudicating Authorities under FERA are not maintainable before the Special Director (Appeals) appointed under FEMA.

16. This argument of the revenue cannot be accepted because both Section 17 and Section 19 of FEMA contain the word 'Adjudicating Authority' and if the word 'Adjudicating Authority' in those sections are construed to mean the Adjudicating Authorities under FEMA, then, it would mean that appeals under Section 17 and Section 19 of FEMA would be maintainable only against the orders passed under FEMA. That would in turn mean that there is no appellate forum provided under FEMA against the orders passed by the Adjudicating Authorities under FERA. As noted earlier, on repeal of FERA, the substantive right of appeal against the orders of the Adjudicating Authorities accrued under FERA are not destroyed but are preserved under FEMA. If the contention of the revenue that the word 'Adjudicating

Authority' means the Adjudicating Authority under FEMA is accepted, then it would mean that the appeals against the orders of the Adjudicating Authorities under FERA would neither be maintainable under Section 17 nor under Section 19 of FEMA. If Section 17 and Section 19 of FEMA are held not applicable, in these cases, then the appellate remedy preserved under FEMA against the orders passed by the Adjudicating Authorities under FERA would be meaningless. Such a construction putforth by the revenue which defeats or destroys the substantive right of appeal cannot be accepted. Similarly, the argument of the revenue that, because the Special Director (Appeals) is appointed under Section 2(zc) of FEMA to hear appeals against the orders passed by the Adjudicating Authorities under FEMA, appeals under Section 17 are restricted against the orders passed by the Adjudicating Authorities under FEMA is also without any merit and is liable to be rejected.

17. To overcome the above difficulty, it is argued on behalf of the revenue that the words 'Adjudicating Authority other than those referred to in Section 17(1)' contained in Section 19(1) of FEMA would cover appeals against the orders passed by the Adjudicating Authorities under FERA. The submission is that the words 'Adjudicating Authority other than those referred to in Section 17(1)' contained in Section 19(1) of FEMA

are wide enough to cover the appeals against the orders passed by the Adjudicating Authorities under FERA. There is no merit in this contention. As noted earlier, the appellate remedy under Section 17 of FEMA is restricted to the appeals against the orders passed by the Adjudicating Authorities such as Assistant Director / Deputy Director of Enforcement only. Section 19 of FEMA provides that all appeals against the Adjudicating Authorities other than those covered under Section 17 are maintainable before the Appellate Tribunal. Therefore, in Section 19(1) the expression 'Adjudicating Authority other than those referred to in Section 17(1)' simply means that the appeals before the Appellate Tribunal is restricted against the orders of the Adjudicating Authorities such as Director / Special Director / Additional Director of Enforcement and nothing more than that. Hence, the argument of the revenue that appeals against the orders passed by all the Adjudicating Authorities under FERA including the orders passed by the Assistant Director / Deputy Director of Enforcement would be maintainable before the Appellate Tribunal cannot be accepted.

18. Referring to Section 49 of FEMA as also Section 6 of the General Clauses Act, 1897 it is contended by the revenue that by abolishing the FERA Board and by directing that the appeals which were instituted before

the Appellate Board but not disposed of before the commencement of FEMA shall stand transferred to and shall be disposed of by the Appellate Tribunal constituted under FEMA, the legislature has made it clear that the appeals which were hitherto maintainable before the Appellate Board under FERA should be instituted before the Appellate Tribunal constituted under FEMA. In our opinion, there is no merit in this contention as well. By dissolving the Appellate Board constituted under FERA and by constituting two appellate forums namely the Special Director (Appeals) and the Appellate Tribunal under FEMA, the legislature has made it clear that on commencement of FEMA, all appeals against the adjudication orders passed whether under FERA or FEMA shall be instituted before either of the two appellate forums constituted under FEMA. In Section 49(5)(a) of FEMA the legislature has provided that notwithstanding the repeal, actions taken under FERA shall be deemed to have been taken under the corresponding provisions of FEMA. In Section 49(5)(b) the legislature has provided that the appeals pending before the Appellate Board shall be transferred to the Appellate Tribunal constituted under FEMA. Reading sub-section (a) and (b) of Section 49(5) of FEMA together, it is evident that unless specifically provided, all actions taken under FERA shall be deemed to have been taken under the corresponding provisions of

FEMA. In this view of the matter, the adjudication orders passed by the Assistant Director / Deputy Director of Enforcement under FERA are deemed to be the adjudication orders passed under FEMA and accordingly the appeals against the orders passed by the Assistant Director / Deputy Director of Enforcement under FERA would be maintainable before the Special Director (Appeals).

19. It is pertinent to note that under Section 54 of FERA, appeals against the orders passed by the Appellate Board were maintainable before the High Court. Even under Section 35 of FEMA, appeals are maintainable before the High Court against the order passed by the Appellate Tribunal constituted under FEMA. After repealing FERA, the legislature in Section 49(5)(c) of FEMA has provided that if appeals against the orders of the Appellate Board under FERA are not filed before the High Court on the date of commencement of FEMA, then those appeals may be filed before the High Court within a period of sixty days of the commencement of FEMA. No such provision is made under FEMA in respect of the appeals which had remained to be filed before the Appellate Board on the date of its dissolution. This clearly shows that the legislature intended that appeals against the orders passed by the Adjudicating Authorities under FERA should be filed before the

appropriate appellate forum provided under FEMA.

20. If the legislature intended that after the dissolution of the Appellate Board, all appeals against the orders passed by the Adjudicating Authorities under FERA should be instituted only before the Appellate Tribunal constituted under FEMA, then the legislature would have specifically stated so. As no such provision is made under FEMA, it is crystal clear that on commencement of FEMA, the legislature intended that appeals against the orders passed by the Adjudicating Authorities under FEMA as also under FERA have to be maintained before the Special Director (Appeals) or the Appellate Tribunal as the case may be. It may be noted that even under the Central Excise Act, 1944 and the Customs Act, 1962 appeals against the orders passed by the Adjudicating Authorities below the rank of a Commissioner are maintainable before the Commissioner (Appeals) and the appeals against the Adjudication Authorities above the rank of Commissioner are maintainable before the Tribunal. Thus, it is apparent that in consonance with the provisions contained in other statutes, the legislature, on repeal of FERA, did not intend to continue with the single appellate forum provided under FERA against the orders passed by the Adjudicating Authorities under FERA. Accordingly, in the newly enacted FEMA, the legislature provided that

appeals against the orders passed by the Adjudicating Authorities such as Assistant Director / Deputy Director of Enforcement should be instituted before the Special Director (Appeals) and appeals against all other Adjudicating Authorities should be instituted before Appellate Tribunal.

21. From the aforesaid analysis of the provisions contained in FEMA, we have no hesitation in holding that the appeals against the adjudication orders passed by the Assistant Director / Deputy Director (Appeals) under the repealed provisions of FERA read with Section 49 of FEMA are maintainable before the Special Director (Appeals) and appeals against the orders of all other Adjudicating Authorities are maintainable before the Appellate Tribunal constituted under FEMA.

22. The Apex Court in the case of Gajraj Singh V/s. State Transport Appellate Tribunal reported in (1997) 1 SCC 650 [which is reiterated in the case of Gammon India Limited reported in 2006(2) Scale 414] has observed (in para 24) thus:

> "24. When there is a repeal and simultaneous re-enactment, Section 6 of the GC Act would apply to such a case unless contrary intention can be gathered from the repealing Act. Section 6 would be applicable in such cases unless the new legislation manifests intention inconsistent with or contrary to the application of the section. Such incompatibility would have to be ascertained from all relevant provisions of the

> new Act. Therefore, when the repeal is followed by a fresh legislation on the same subject, the Court would undoubtedly have to look to the provisions of the new Act only for the purpose of determining whether the new Act indicates different intention. The object of repeal and re-enactment is to obliterate the Repealed Act and to get rid of certain obsolete matters."

On perusal of the provisions contained in the newly enacted FEMA, it is evident that on dissolution of the Appellate Board, the legislature intended that appeals against the orders passed by the Appellate Authorities should be instituted before the appropriate appellate forum provided under FEMA. In view of the above manifest intention contained in FEMA in relation to the institution of appeals against the orders passed by the Adjudicating Authorities, there can be no doubt that on commencement of FEMA, appeals against the orders of the Adjudicating Authorities whether passed under FEMA or under FERA have to be instituted before the appropriate appellate forum as provided under Section 17 and Section 19 of FERA. Therefore, the contention of the revenue that, because the pending appeals are transferred to the Appellate Tribunal, all appeals against the orders passed by the Adjudicating Authorities under FERA, on commencement of FEMA have to be instituted only before the Appellate Tribunal is without any merit and is liable to be rejected.

23. For all the aforesaid reasons, the petitions are

allowed. The impugned orders passed by the Special Director (Appeals) are quashed and set aside and the Special Director (Appeals) is directed to hear the appeals filed by the petitioners on merits and in accordance with law.

24. All the petitions are disposed of in the above terms with no order as to costs.

(V.C. DAGA, J.)

(J.P. DEVADHAR, J.)